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IN THE

Supreme Court of the United States

October Term, 1953.

No. 376

BERT WILBUR PAUL,

Petitioner,

v.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Bert Wilbur Paul, respectfully prays that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Third Circuit, affirming the judgment of the United States District Court for the Eastern District of Pennsylvania, entered in favor of respondents in an action in admiralty.

THE OPINIONS OF THE COURTS BELOW.

The Opinion of the District Court was filed on November 21, 1951 and appears at R. 11. The Opinion of the Court of Appeals was filed on June 8, 1953 and appears at R. 20. A dissenting Opinion was filed by Chief Judge Biggs (R. 29).

JURISDICTION.

This proceeding is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court and involves a seaman's claim for damages for personal injuries under the maritime law. The statutory jurisdiction of the Supreme Court to review by writ of certiorari the judgment here complained of is conferred by Title 28, United States Code, Section 1254, and is invoked under Rule 38, Par. 5(b) of the Rules of the Supreme Court of the United States.

The judgment of the Court of Appeals was entered on June 8, 1953 (R. 31). Petition for rehearing, timely filed, was denied on June 29, 1953 (R. 32).

QUESTION PRESENTED.

Where a vessel is temporarily docked in port, is the shipowner's maritime duty to provide its seamen with a safe means of egress from the vessel restricted to egress from the vessel to the dock and does not extend beyond the immediate vicinity of the vessel's gangway, or may it also encompass that area of the dock which seamen must traverse when going ashore on liberty?

SUMMARY STATEMENT OF THE MATTER INVCLVED.

This is an action in admiralty by a merchant seamen for the recovery of damages for personal injuries sustained by him while in the service of respondent's vessel, the S. S. "William Moultrie". The facts were stipulated (R. 11-13) and may be summarized as follows:

The S. S. "William Moultrie" sailed from Philadelphia in April of 1946 and arrived at the Port of Brindisi, Italy on the morning of May 6, 1946. She moored at a dock which was constructed parallel to the shore line. A railroad track ran the length of the dock, and alongside the track and parallel to it was a cement walkway six to

seven feet wide and several hundred feet long. It had neither railings nor lights and was unguarded. It was the normal means of passage from the ship to a public highway. About 100 feet beyond the bow of the vessel was an unguarded and unlighted hole or recess about two and one-half feet square and four and one-half feet deep, a permanent part of the dock structure, containing shunting gear used in the operation of the railroad track. The dock was owned by the Italian Government, and both the dock and the port were under British military control.

After dark on the evening of May 7th petitioner, who was the Chief Engineer of the vessel, went ashore on liberty. He mounted the walkway, and as he proceeded along it, he fell into the unguarded and unlighted recess which he did not see, and of the existence of which he had been given no notice or warning by the ship's officers or crew. As a result he sustained injuries for which the present action was instituted.

The District Court entered judgment for the respondent on the ground that the duty to provide safe egress from the vessel does not extend beyond the immediate vicinity of the gangway (R. 11-17). The Court of Appeals affirmed, upon substantially the same grounds, holding that under the maritime law the shipowner's duty is limited to safe egress from the vessel to the dock, and does not extend beyond the immediate vicinity of the vessel's gangway (R. 20-29). Chief Judge Biggs dissented, being of the view that the shipowner's maritime duty to its seamen extended to the area where petitioner was injured (R. 29-30).

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The question here presented is one of fundamental importance in the maritime law governing the shipowner-seaman relationship and involves basic principles concerning the scope and extent of the shipowner's responsibility for the safety of his crew when proceeding ashore in an unfamiliar port on leave. This question has never been squarely presented for decision to this Court.

The decisions which have passed upon the question in the lower federal courts present divergent views, with no clear recognition of what we believe to be the controlling principles involved, and in many instances without recognition of the fact that recent decisions of this Court on closely related questions have demonstrated that the protections afforded to seamen by the maritime law go well beyond the thinking of many of the lower courts.

The Unique Relationship Between Shipowner and Seaman Raises Duties and Responsibilities Under The Maritime Law Which May Not Be Measured by Resort to Common Law Analogies.

One of the most serious obstacles to a correct resolution of the problem, encountered in the decision below, and prevalent among the decisions as a whole, is the pervading feeling that seamen's rights must somehow be justified by resort to common law analogies. This same kind of difficulty had already been encountered in the early interpretations of the Jones Act (Section 33, Merchant Marine Act of 1920, 41 Stat. 1007, 46 U. S. C. A. Sec. 688). Because the Jones Act incorporates into the maritime law the federal acts for the protection of railway employees (*DeZon v. America President Lines*, 318 U. S. 660), the early decisions had read into that Act the supposed Congressional intent that only the same defaults imposing liability upon carriers by rail shall impose liability upon carriers by water. Finally

this Court, in *Cortes v. Baltimore Insular Line,* 287 U. S. 267, recognizing the importance of the problem, consented to review the question, and unequivocally struck down this erroneous view. Starting with the basic premise the conditions at sea differ widely from those on land, that this diversity of conditions breeds diversity of duties, and emphasizing that the "ancient characterization of seamen as 'wards of the admiralty' is even more accurate now than it was formerly," this Court said:

> (U. S. at pp. 377-378) "Congress did not mean that the standards of legal duty must be the same by land and sea. Congress meant no more than this, that the duty must be legal, i.e., imposed by law; that it shall have been imposed for the benefit of the seaman and for the promotion of his health or safety; and that the negligent omission to fulfill it shall have resulted in damage to his person."

So it is, therefore, that just as the duties and responsibilities of a shipowner may not be determined by reference to the liabilities of carriers by rail, so at the least, may they not be circumscribed by resort to common law analogies.

The Court below, measurably persuaded by the limitations of common law thinking,[1] has undertaken to lay down the arbitrary rule that *other than in the immediate vicinity of a vessel's gangway* a shipowner is under no duty to provide a safe passage from or to the vessel. In so doing the Court has failed to adequately take into consideration that the conditions under which seamen must live and work, their relationship to the national economy, and their resulting status in society, have been the root of the protections which the maritime law has historically accorded them. Basically,

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1. Chief Judge Biggs, dissenting, points out that the majority decision rests upon cases in which the plaintiff was a licensee or a business-invitee, *and was not a seaman* (R. 30).

duties and responsibilities are determined by what the law considers as socially desirable and necessary. What may or may not be conduct socially desirable in one setting, cannot fairly be permitted to pre-determine the standards of legal duty in a wholly unrelated setting. Under the maritime law, rescue is a duty when a seaman falls overboard into the sea, although this Court has entertained serious doubt whether a similar duty exists in favor of a railroad engineer who, by misadventure, has fallen from his locomotive: see *Cortes v. Baltimore Insular Line, supra,* 287 U. S. at p. 377. The doctrine of maintenance and cure, unknown to the common law, is traditional in admiralty, being a duty imposed by law as one annexed to the seaman's employment. *The Osceola,* 189 U. S. 158. For failure to provide maintenance and cure, the seaman has a right of action for compensatory damages (*The Iroquois,* 194 U. S. 240; *Cortes v. Baltimore Insular Line, supra; Sims v. United States,* 186 F. 2d 972, cert. den. 842 U. S. 816) though, save in perhaps exceptional circumstances, an injured railway worker does not have the benefit of this benevolent protection. See *Cortes v. Baltimore Insular Line, supra,* at U. S. p. 376.[2] The doctrine of unseaworthiness, i.e., liability

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2. In *DeZon v. American President Lines,* 318 U. S. 660, 666-667, this Court emphasized the seriousness of the obligation which the maritime law imposes upon shipowners out of regard for the health and safety of its seamen:

> "When the seaman becomes committed to the service of the ship the maritime law annexes a duty that no private agreement is competent to abrogate, and the ship is committed to the maintenance and cure of the seaman for illness or injury during the period of the voyage, and in some cases for a period thereafter. This duty does not depend upon fault. *It is no merely formal obligation and it admits of no merely perfunctory discharge.* . . . Although there may be no duty to the seaman to carry a physician, the circumstances may be such as to require reasonable measures to get him to one, as by turning back, putting into the nearest

without fault for injuries resulting from unsafe and improper appliances and equipment, unknown to the common law and available only in a restricted statutory form to railway employees (see *Urie v. Thompson*, 337 U. S. 163), has been a traditional protection in admiralty, being available not only to seamen (*Mahnich v. Southern Steamship Co.*, 321 U. S. 96) but to longshoremen as well (*Seas Shipping Company v. Sieracki*, 328 U. S. 85). In *Jacob v. City of New York*, 315 U. S. 752, this Court refused to permit the common-law "simple tool" doctrine to defeat a seaman's claim for personal injuries holding that to do otherwise would be "so obvious a perversion of the Jones Act as to require no comment" (U. S. at p. 758).

It is therefore not consonant with considered judicial thinking, nor is it historically sound, to attempt to transpose problems involving the unique relationship of shipowner and seaman, from their maritime context into unrelated shoreside employer-employee relationships, and thus, by equation, to measure the scope and extent of maritime duties and responsibilities.[3] Yet this is precisely the kind of approach which the Court below has pursued. It has undertaken to inject into the maritime law principles which have their roots in common law relationships. Adequate though they may be in their proper setting, they cannot but result in the substantial impairment of rights when imposed upon maritime relationships.

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port although not one of call, or taking other measures of considerable cost in time and money. Failure to furnish such care, even at the cost of a week's delay, has been held by this Court to be a basis for damages." (Emphasis supplied.)

3. Mr. Justice Frankfurter quite recently pointed out (concurring in *May v. Anderson*, — U. S. —, 97 L. Ed. Advance Op. 767, 773) that the uncritical transposition of legal theories from one field of the law to another readily leads to fallacious reasoning.

The Guardian-Wardship Theory.

Part and parcel of the shipowner-seaman status, of controlling importance to the problem at hand, and nonexistent in shoreside employer-employee relationships, is the guardian-wardship theory. This Court, in *Robertson v. Barry Baldwin,* 165 U. S. 275, 287, early pointed out that seamen are treated by Congress, as well as by the Parliament of Great Britain, as needing the protection of the law in the same sense in which minors and wards are entitled to the protection of their parents and guardians. In *Mahnich v. Southern S. S. Co., supra* (321 U. S. 96, 103) this Court, in evaluating the extent of the shipowner's responsibility for defective appliances, observed:

> "We have often had occasion to emphasize the conditions of the seaman's employment . . . which have deemed to make him a ward of the admiralty and to place large responsibility for his safety on the owner. He is subject to the rigorous discipline of the sea, and all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers."

In *The Iroquois, supra* (194 U. S. 240, 247) this Court said of the relationship that the master is the seaman's legal guardian in the sense that "it is a part of his duty to look out for the safety and care of his seamen *whether they make a distinct request for it or not.*" (Emphasis supplied.) So compelling is this solicitude for admiralty's wards that, contrary to common law precepts, "*the burden is upon one who sets up a seaman's release* to show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights." (Emphasis supplied.) *Garrett v. Moore-McCormack Co.,* 317 U. S. 239, 248.[4] Very recently this Court, in

4. See *Hume v. Moore-McCormack Lines,* 121 F. 2d 336 (C. A. 2) where Circuit Judge Frank discusses the history and policy behind the maritime view, as opposed to the long prevailing common law view.

Isbrandtsen v. Johnson, 343 U. S. 799 (June, 1952), reaffirmed and implemented this ancient maritime doctrine in striking down a shipowner's asserted right to deduct from a seaman's wages certain claimed set-offs.[5]

Where a Seaman on Shore Leave Is Injured on a Dock Leading From a Vessel to a Public Highway, the Shipowner's Duty to Provide Safe Egress Does Not Terminate the Moment the Seaman Steps Off the Vessel's Gangway.

The majority opinion below, putting aside our contention that it is against this background that the scope and extent of the shipowner's obligation to see to the safety of the crew must be examined, was of the view that to impose liability here would "throw wide open the gate to liability

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5. Speaking through Mr. Justice Burton, this Court said (U. S. pp. 782-783):

> "Whenever Congressional legislation in aid of seamen has been considered here since 1872, this Court has emphasized that such legislation is largely remedial and calls for liberal interpretation in favor of the seaman. The history and the scope of the legislation is reviewed in Aguilar v. Standard Oil Co., 318 U. S. 724, 727-735, . . . 'Our historic national policy, both legislative and judicial, points the other way (from burdening seamen). Congress has generally sought to safeguard seamen's rights.' Garrett v. Moore-McCormack Co., 317 U. S. 239, 246 . . . 'The maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a "ward of the admiralty," often ignorant and helpless, and so in need of protection against himself as well as others. 'The ancient characterization of seamen as "wards of admiralty" is even more accurate now than it was formerly.' Robertson v. Baldwin, 165 U. S. 275, 287 . . ."

for any and all injuries which befall them" (R. 27).[6] We submit that it is indeed against this background that the existence of the duty asserted here, and whether or not it is socially desirable in its maritime setting, must be determined. The entire body of decisions in this Court, dealing with the shipowner-seaman relationship, points unerringly to this conclusion. Nor does it follow that to do so would throw wide the gates of liability. That relaxation beyond the confines of the ship *is part of the ship's business, and not merely the personal business of the seaman,* is irrevocably established in the maritime law by the decision of this Court in *Aguilar v. Standard Oil Co.,* (decided together with *Waterman Steamship Corporation v. Jones*) 318 U. S. 724, where the specific fulcrum for determination of the question was the seaman's right to maintenance and cure when injured in the dock area ashore on leave.[7] As against the contention (U. S. at pp. 727-728) that the obligation to provide maintenance exists only while the seaman is on duty or at work, doing some task connected with the vessel's business, that going ashore simply for diversion takes the seaman out of the service of the ship, and that the point of departure is made the moment the seaman steps off the deck onto the dock, this Court said:

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6. We do not mean to imply that the Court below has not, as a general rule, given full recognition and import to the guardian-wardship theory. Quite the contrary. In *Jones v. Waterman Steamship Corporation,* 155 F. 2d 992, 1000 (affirmed 318 U. S. 724) the Court below said:

> "We are of the opinion that the relationship of the shipowner to the seaman is more closely analogous to that of father and child than to that of an employer to a mere employee. We prefer to impose a higher degree of dignity upon the ship-seaman relationship, awarding to it a status or 'social condition' . . ."

See also *Murphy v. American Barge Line Co.,* 169 F. 2d 61, 64; *Spellman v. American Barge Line Co.,* 176 F. 2d 716, 721.

7. Jones was injured on the pier while proceeding to a public highway. Aguilar was injured about a half mile from the vessel while returning from shore leave.

(U. S. pp. 727-728) "From the earliest times maritime nations have recognized that unique hazards, emphasized by unusual tenure and control, attend the work of seamen. The physical risks created by natural elements and the limitations of human adaptability to work at sea enlarge the narrower and more strictly occupational hazards of sailing and operating vessels. And the restrictions which accompany living aboard ship for long periods at a time combine with the constant shuttling between unfamiliar ports to deprive the seaman of the comforts and opportunities for leisure, essential for living and working, that accompany land occupations. Furthermore, the seaman's unusual subjection to authority adds the weight of what would be involuntary servitude for others to these extraordinary hazards and limitations of ship life.

"Accordingly, with the combined object of encouraging marine commerce and assuring the well-being of seamen, maritime nations have uniformly imposed broad responsibilities for their health and safety upon the owners of ships.

(U. S. pp. 732-734) "When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed. When he leaves the ship, contrary to orders, however, the owner's duty is ended. Between these extremes are the instant cases, raising for the first time here the question of the existence and scope of the shipowner's duty when the seaman is injured while on shore leave but without specific chore for the ship. Liability in that circumstance was obscured in the first maritime codes and although early suggested has been recognized only implicitly in lower federal courts. Very recently it has been explicitly denied in several district courts.

"We think that the principles governing shipboard injuries apply to the facts presented by these cases.

To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. *The assumption is hardly sound that the uses and purposes of shore leave are 'exclusively personal' and have no relation to the vessel's business.* Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore 'the superfluous is the necessary . . . to make life livable.' *In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.*

"The voyage creates not only the need for relaxation ashore, but the necessity that it be satisfied in distant and unfamiliar ports. If in those surroundings the seaman, without disqualifying misconduct, contracts disease or incurs injury, it is because of the voyage, the shipowner's business. That business has separated him from his usual places of association. By adding this separation to the restrictions of living as well as working aboard, it forges dual and unique compulsions for seeking relief wherever it may be found. *In sum, it is the ship's business which subjects the seaman to the risks attending hours of relaxation in strange surroundings. Accordingly, it is but reasonable that the business extend the same protections against injury from them as it gives for other risks of the employment.*" (Emphasis supplied.)

So, too, is it firmly established that neither the limits of admiralty jurisdiction, nor the seaman's right to com-

pensatory damages, accorded by the maritime law as modified by the Jones Act, may be circumscribed and limited by strict geographical lines which seek to draw an artificial boundary between the vessel and the dock: the seaman's right to compensatory damages, as well as his right to maintenance and cure, depends not on the place where the injury was inflicted but upon the nature of the service and its relation to the business of the vessel plying in navigable waters. *O'Donnell v. Great Lakes Dredging & Dock Co.*, 318 U. S. 36.

There are decisions in the lower federal courts, dealing with the scope and geographical extent of the shipowner's duty to provide safe means of ingress to and egress from the vessel, of which the decision below is but typical, which, persuaded by common-law concepts, have measurably disregarded the unique relationship of the seaman to the vessel's enterprise. An early example may be found in the *Californian*, 124 Fed. 99 where a seaman who was returning from shore leave late at night was injured on a passageway *on deck* which had been obstructed by the stowage of coal. Recovery was denied: "The ship was obliged to furnish light to the libellant while he was engaged in the performance of his master's duty but not to light him to his quarters after he had spent the evening, to a late hour, *ashore for his own pleasure or convenience.*" (Emphasis supplied). Again, in *Togo Kisen Kaisha v. Hartman*, 253 Fed. 422 (C. A. 9) a seaman who was injured while returning from shore leave was denied recovery on the theory, inter alia, that "*neither in going from or returning to the ship was the (seaman) traveling for any purpose connected with the business of his employer, but solely for his own pleasure and business.*" (Emphasis supplied). A much more recent case and one which was decided after the *O'Donnell* and *Aguilar* cases, *supra*, exemplifying a peculiar reluctance to accept these decisions within their full letter and spirit, is *Wheeler v. West India S.S. Co.*,

103 F. Supp. 631, 634 [8] (cited and relied upon by the Court below—R. 25) where the following observation is made:

> "Though the defendant was duty bound to provide reasonably safe means of immediate access to the vessel, . . . shipowners have generally been held not liable for unsafe conditions in places beyond the gangway not under their control *where the seaman is there for his own purposes and not in the performance of his duties* . . . The suggestion that the Supreme Court's decisions in the O'Donnell and Aguilar cases indicate an extension of the shipowner's liability so as to include such situations was clearly rejected in Lemon v. United States, D. C., 68 F. Supp. 793 . . . The Court according is forced to conclude that, at least as yet, it can not be held that the shipowner's liability extends to such situations." (Emphasis supplied.)

Opposed to these cases are decisions such as *Nowery v. Smith,* 69 F. Supp. 755 and *Monteiro v. Paco Tankers, Inc.,* 93 F. Supp. 93, in which the Courts have not hesitated to follow through to their inevitable conclusion the principles laid down in the foregoing decisions of this Court. In *Nowery, supra,* the Court held that the logic of the decisions in the *O'Donnell* and *Aguilar* cases, *supra,* "compels the conclusion that the seaman should also be considered on 'the shipowner's business' *while he is actually enjoying his shore leave"* (69 F. Supp. 755, 757), and imposed liability for damages where a seaman was the victim of an assault by another member of the crew while the former was enjoying his shore leave in a barroom. In *Monteiro, supra,* the Court likewise imposed liability for damages where a seaman, after the termination of his employment and while leaving the vessel, was assaulted in the vicinity of the gate to the oil company premises where the vessel had docked, holding that the captain of the vessel

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8. Affirmed per curiam in 205 F. 2d 354 (C. A. 2), petition for certiorari presently pending before this Court.

owed the seaman "a very definite obligation for a safe deliverance from the ship until he was definitely on his own", that the shipowner's responsibility for the plaintiff's safety did not terminate the moment plaintiff left the ship, and that the shipowner's obligation extended "beyond the point where he went ashore until he had actually and physically gotten away from the ship safely to such point as might be termed neutral territory." (93 F. Supp. 93, 95)[9]

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9. Compare *Marceau v. Great Lakes Transit Corporation*, 146 F. 2d 416 (C. A. 2); *Kyriakos v. Goulandris*, 151 F. 2d 132 (C. A. 2); *Walton v. Continental Steamship Co., et al.*, 66 F. Supp. 836, 841; *Rudolph v. Industrial Marine Service Inc.*, 213 S. W. 2d 30 (Tenn.), 1948 A. M. C. 2009.

Nor is there lack of precedent, in forward-looking common law courts, for extending the "safe place to work" doctrine beyond the immediate confines of the employer's premises. See, for example, *Patrick v. Atlas Knitting Co.*, 164 App. Div. (N. Y.) 753, 755, 149 N. Y. Supp. 845, where the Court held:

> "It is the duty of the master to furnish his employees with a safe place to work, and with access to and egress from its plant. (Dorney v. O'Neill, 49 App. Div. 8). It is the settled law that the master must furnish a safe egress from his factory. Egress to what? To a known place of danger? Not so; to a place of safety. It will not answer for the master to turn his employees out at twilight upon the tracks of the most used railroad in the United States, where the swiftest trains in the United States are constantly passing and repassing. This does not comply with the law. *An egress cannot be safe unless it terminates in a place of safety.*" (Emphasis supplied.)

In the field of workmen's compensation, on somewhat similar considerations of policy, courts have regularly held that employees injured while traversing premises not owned by the employer, but providing the only practicable means of access to the employer's plant, are injured in the course of employment: *Cudahy Packing Co. v. Parramore*, 263 U. S. 418.

Inseparably a part of the common-law approach to the question at issue, persuasive to the Court below, and running as a thread through some of the decisions in this field, is the reluctance to impose liability upon a shipowner who does not own and has no control of the dock area where the seaman is injured. We submit that it is erroneous to view the existence of the duty as dependent upon the question of control.[10] Control of the area cannot abrogate the duty to

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10. Compare *Cardillo v. Liberty Mutual Insurance Co.*, 330 U. S. 469, 480-481 where this Court in considering the question whether an injury arose out of and in the course of employment, within the meaning of the District of Columbia Workmen's Compensation Act (D. C. Code 1940, Title 36, c5, Section 1) rejected the common-law concepts of control as being decisive. Said the Court:

> ". . . it was error for the Court of Appeals in this case to emphasize that the employer must have control over the acts and movements of the employee during the transportation before it can be said that an injury arose out of and in the course of employment. The presence or absence of control is certainly a factor to be considered. But it is not decisive.
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> "Indeed to import all the common law concepts of control and to erect them as the sole or prime guide for the Deputy Commissioner in cases of this nature would be to encumber his duties with all the technicalities and unrealities which have marked the use of those concepts in other fields. See National Labor Relations Bd. v. Hearst Publications, supra (322 U. S. 120, 121, 125, 88 L. ed. 1178, 1179, 1181, 64 S. Ct. 851); Hust v. Moore-McCormack Lines, 328 U. S. 707, 723-725, 90 L. ed. 1534, 1543, 1544, 66 S. Ct. 1218. That we refuse to do. 'The modern development and growth of industry, with the consequent changes in the relations of employer and employee, have been so profound in character and degree as to take away, in large measure, the applicability of the doctrines upon which rest the common law liability of the master for personal injuries to a servant, leaving of necessity a field of debatable ground where a good deal must be conceded in favor of forms of legislation, calculated to establish new bases of liability

provide safe means of egress and ingress—it is merely a factor to be taken into consideration in determining whether the duty has been negligently breached: it may narrow the area in which the charge of negligence can properly be leveled against the shipowner. Obviously the respondent here had no right to eliminate the hazardous condition existing on the dock, since it neither owned nor controlled the premises. But that would have been equally true if the particular hazard encountered by the seaman here had been located at the foot of the gangway. It is clear, therefore, that under the very rationale adopted by the Court below, absence of control over the area in question cannot be decisive. And this for the very reason that the fact of non-ownership and control in no wise hampers the shipowner from discovering and warning against the hazard. In brief, the absence of control in the case at bar, as in every case of this kind, reflects merely upon the *kind* of conduct which may reasonably be expected of the shipowner; it cannot be held to destroy the duty altogether and thus to provide complete absolution from responsibility. Certainly this factor may not provide a valid distinction between injuries sustained at the foot of the gangway and those sustained a short distance beyond, for this factor is present in either situation. If a line must be drawn somewhere, then assuredly its location cannot be determined by reference to a factor which is common to the areas on either side of the line, otherwise it becomes a purely arbitrary determination altogether devoid of definitive principles.

The Court Below Erroneously Relied Upon Dicta in *Aguilar v. Standard Oil Co.*, 318 U. S. 724.

The Court below was measurably misled by dicta appearing in this Court's opinion in *Aguilar v. Standard Oil*

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more in harmony with these changed conditions.' Cudahy Packing Co. v. Parramore, supra (263 U. S. 423, 63 L. ed. 369, 44 S. Ct. 153, 30 ALR 532, 23 NCCA 744)."

Co., supra (at U. S. pp. 736-737) which, we are firmly convinced, was misapplied to this case. The language relied upon is, as follows, and is quoted in the Opinion below at R. 28.

> "Plaintiffs here were injured while traversing an area between their moored ships and the public street by an appropriate route . . . And it is said the shipowner should not be liable (for maintenance and cure) because he had no control over the premises. But it was the shipowner's business which required the use of those facilities. *And his obligation to care for the seaman's injuries is, as has been shown, in no sense a function of his negligence or fault . . . Consequently, the fact that the shipowner might not be liable to the seaman in damages for the dock-owner's negligence, cf. Todahl v. Sudden & Christenson,* 5 F. 2d 462 (CCA) *does not relieve him of his duty of maintenance and cure.*" (Emphasis supplied by the Court below.)

First of all, we do not believe that by the above-quoted language this Court undertook to determine, even by way of dicta, the question presented by this petition. It was merely disposing of an argument advanced in opposition to its ultimate holding, and in doing so virtually assumed, without passing upon, the premise around which the argument was built. Secondly, we do not here contend that the shipowner should be held liable for the dockowner's negligence, *but solely for his own default.* Finally, we do not believe that this Court, in any sense, approved or would today approve the decision in *Todahl v. Sudden & Christenson* which it cites, for that decision flies squarely in the teeth of recent decisions of this Court in two major respects: (a) in holding, contrary to *O'Donnell v. Great Lakes Dredge & Dock Co., supra,* that the Jones Act cannot apply to a seaman's claim for injuries sustained on the dock, it being beyond the admiralty jurisdiction, and (b) in considering a seaman ashore on leave as being on "purposes of his own"

and not on the ship's business, contrary to *Aguilar v. Standard Oil Co., of New Jersey, supra.* We submit, finally, that the very fact that the Court below was able to fall into the error of misconstruing language used by this Court in the *Aguilar* case, *supra,* and was measurably influenced thereby in deciding a question of major importance in the maritime law, should merit consideration by this Court in determining the propriety of reviewing the question here presented.

CONCLUSION.

In the present state of the lower federal court decisions there is urgent need for a clarifying decision by this Court. The fear expressed by the Court below that by imposing liability here the gates would be thrown wide open for imposing upon the shipowner responsibility "for any and all injuries which befall" seamen we do not believe to be well founded. But to the extent that this fear exists, it presents a serious obstacle to a proper determination of the present question, and should be removed by the formulation of definitive principles not yet fully articulated by this Court.

Chief Judge Biggs, dissenting in the Court below, was unable to "bring (himself) to the conclusion that the master of the 'Moultrie' did not have a duty to the libellant, as a ward of the admiralty, to exercise reasonable diligence to make sure that the walkway, the customary way of egress from the vessel to the shore, was safe" (R. 29). The majority opinion, on the other hand, would lay down an arbitrary rule limiting the duty to the immediate vicinity of the vessel's gangway. But just as it would be irrational to hold that the shipowner is obliged to guard against any and every hazard encountered by the seaman during the course of the voyage, so is it ill-founded to place limitations on the duty which bear no relation to the necessities of maritime commerce. Vessels customarily put in to strange and for-

eign ports. It may well be asked what good will be accomplished by requiring the shipowner to safely deposit his seaman at the foot of the gangway only to have him fall into a hidden trap some moments later. Would not a parent be held to some accounting if, under similar circumstances, he left his child ashore in strange surroundings without some thought to the latter's safety? Or let us suppose that unknown to the crew, but with full knowledge of the master, a vessel puts in at a malaria-infested port. Can it be said categorically and with assurance that under the maritime law the master cannot, under these circumstances, be held guilty of negligence in failing to warn his crew against the dangers of going ashore?[11] This Court is, of course, not called upon to answer these and countless other hypothetical situations which readily occur to the mind. But they do point up the tenuous character of the "immediate vicinity of the gangway" doctrine, and demonstrate the ur-

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11. In *Jamison v. Encarnacion*, 281 U. S. 635, 640, this Court said, in construing the Jones Act:

> "The act is not to be narrowed by refined reasoning or for the sake of giving 'negligence' a technically restricted meaning. It is to be construed liberally to fulfill the purposes for which it was enacted and to that end the word can be read to include all the meanings given to it by courts and within the word as ordinarily used."

And again, in interpreting the *Federal Employers' Liability Act*, 45 U. S. C. Sec. 51 et seq. (incorporated by reference into the Jones Act), this Court, in *Urie v. Thompson, supra*, 337 U. S. 163, 181, said:

> "To read into this all-inclusive wording a restriction as to the kinds of employees covered, the degree of negligence required, or the particular sorts of harms inflicted, would be contrary to the wording, the remedial and humaritarian purpose, and the constant and established course of liberal construction of the Act followed by this Court."

gent need for definitive principles which will afford a fair and intelligent guide to the solution of the question at hand.

For the foregoing reasons it is respectfully requested that this petition for a writ of certiorari be granted.

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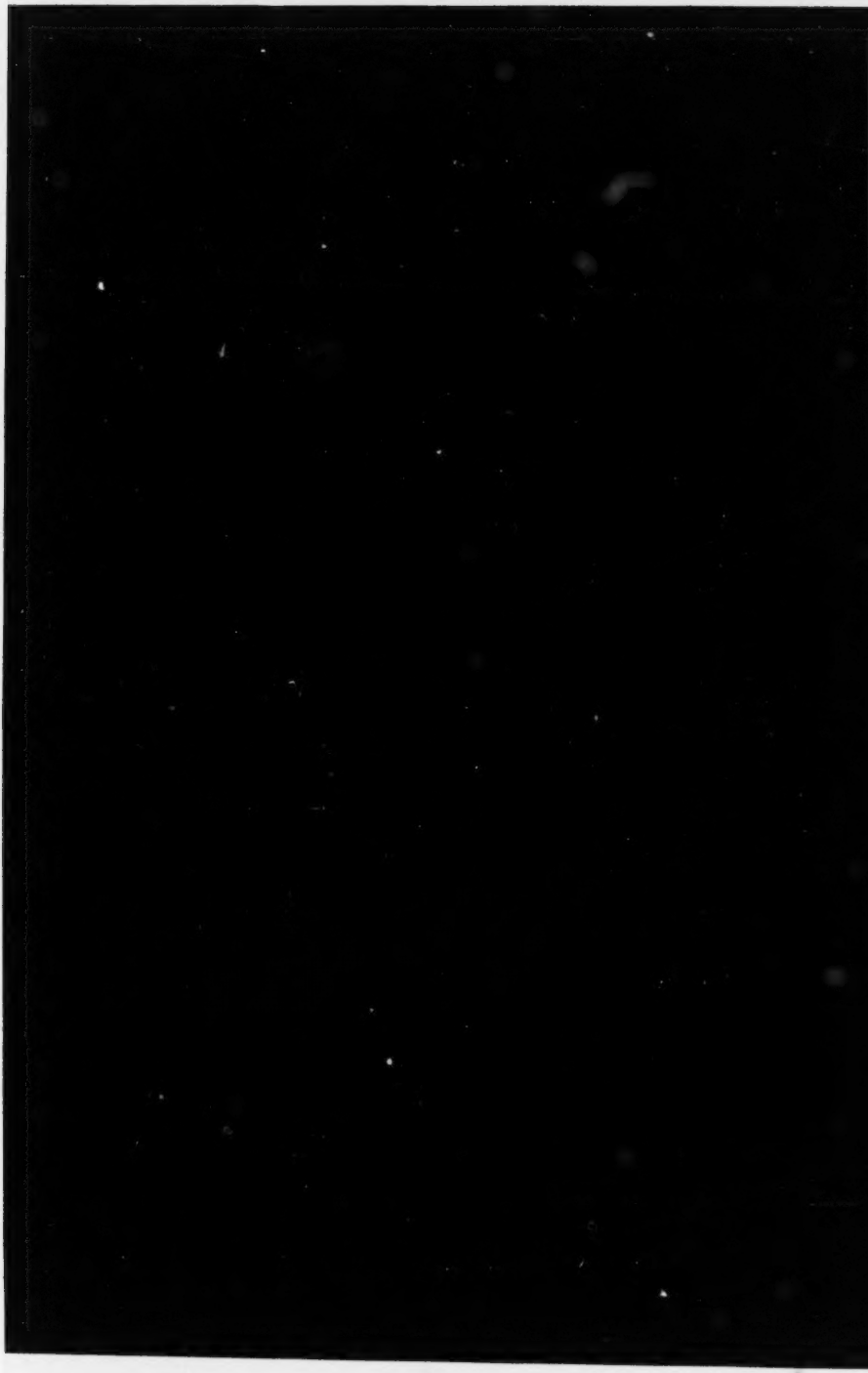

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276547—53

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 376

BERT WILBUR PAUL, PETITIONER

v.

UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 11a–17a) is reported at 101 F. Supp. 89. The opinion of the United States Court of Appeals for the Third Circuit (R. 20–30) is reported at 205 F. 2d 38.

JURISDICTION

The judgment of the Court of Appeals was entered on June 8, 1953 (R. 31). A petition for rehearing was denied on June 29, 1953 (R. 32). The petition for a writ of certiorari was filed on

September 25, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, for purposes of liability under the Jones Act, a shipowner's duty to a seaman to provide safe egress from ship to shore includes the area beyond the confines of the ship and extending to the public street, over which area the shipowner has no dominion or control.

STATUTES INVOLVED

The Jones Act (Section 33 of the Merchant Marine Act of 1920), 41 Stat. 1007, 46 U. S. C. 688, provides in pertinent part as follows:

> That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. * * *

The scope of an employer's liability under the Jones Act is defined in Section 1 of the Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. 51, which provides in pertinent part as follows:

> That every common carrier by railroad while engaging in commerce * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, * * * for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, * * *

Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, provides in part as follows:

> That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. * * *

STATEMENT

For personal injuries sustained while on shore leave in the port of Brindisi, Italy, Bert Wilbur Paul filed a libel *in personam* in the United States

District Court for the Eastern District of Pennsylvania against the United States and the United States Maritime Commission, owners and operators of the SS. *William Moultrie*. As a first cause of action (R. 2a–4a), Paul alleged that his injuries were the consequence of the negligence of the United States for which he sought damages under the Jones Act.[1] The second cause of action (R. 4a–5a) was a claim for maintenance and cure covering the disability period. This aspect of the case was settled before trial in the District Court leaving only the action for damages which was submitted to and decided by the District Court upon stipulated facts (R. 11a–13a).

In substance, the facts, as stipulated, are as follows (R. 11a–13a): Paul joined the SS. *William Moultrie* as Chief Engineer on March 19, 1946. The vessel, owned and operated by the United States, arrived at the Port of Brindisi, Italy, on the morning of May 6, 1946, at which time it was moored to a long dock constructed parallel to the shore line. The dock with its walkway and appurtenances was owned by the Italian government and, along with the port itself, was then under the control of the British military authorities. Parallel to the water line and running the length of the dock was a rail-

[1] Section 33 of the Merchant Marine Act of 1920, 41 Stat. 1007, 46 U. S. C. 688, *supra* p. 2, made applicable to the United States by Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, *supra* p. 3.

road track and alongside this track, raised three or four steps above it, was a cement walkway or platform six or seven feet wide and several hundred feet in length which provided the means of egress from the vessels moored at the dock. The walkway was sheltered by a V-shaped roof, but had no railings and was unlighted.

On the day of arrival at the port, Paul went ashore during the daylight hours, on which occasion he elected to walk along the railroad track rather than to use the walkway. After dark on the following evening (May 7, 1946), Paul again left the ship on shore leave; on this occasion, he ascended to the walkway and walked along it to a point approximately 100 feet beyond the bow of the ship. At that point he fell into an unguarded and unlighted hole about 2½ feet square and 4½ feet deep, resulting in the injuries complained of in the libel. The depression was a permanent part of the dock structure containing shunting gear used in switching operations of the railroad track. No notice of its presence had been given to Paul by the ship's officers or crew.[2]

Upon these facts, the District Court concluded (R. 17a) that the injuries sustained by Paul were not caused by the negligence of the United States; judgment in favor of the United States was ac-

[2] The stipulation is silent as to whether government agents actually knew of the presence of the hole.

cordingly entered and the libel dismissed (R. 18a).

The Court of Appeals affirmed, Judge Biggs dissenting (R. 20–31), rejecting (as the District Court had previously done) the contentions (1) that the shipowner's duty to provide safe egress from the vessel continued until a seaman reaches the public highway and (2) that, in the circumstances of this case, the United States was under a duty to inspect, detect, and warn Paul of the presence of the depression in the cement walkway which had caused his injuries.

ARGUMENT

The decision of the Court of Appeals rests neither upon the fact that the injuries sustained by this petitioner occurred on land (*O'Donnell* v. *Great Lakes Co.*, 318 U. S. 36) nor upon the fact that the injuries were sustained at a time when this petitioner was on shore leave (*Aguilar* v. *Standard Oil Co.*, 318 U. S. 724) (Pet. 9–17). Neither may the result be fairly said to rest upon a misrepresentation of the rationale of *Aguilar* v. *Standard Oil Co., supra,* nor a misconstruction of the language of this Court in that case (Pet. 17–19). Rather, it rests upon a determination that, in the circumstances of this case, the United States did not owe petitioner any duty and was therefore not negligent; accordingly, there was no basis for liability under the Jones Act, which requires proof of fault or

negligence. *De Zon* v. *Amer. President Lines,* 318 U. S. 660.

Both the District Court and the Court of Appeals, after detailed discussion and analysis of relevant authorities, reached the conclusion that, for purposes of an action for damages brought under the Jones Act, a shipowner's duty to a seaman to provide a safe means of egress from ship to shore did not extend to physical facilities beyond the confines of the ship and its appurtenances and into an area beyond the ship over which no dominion or control was or could be exerted by the shipowner. This negative determination of the only question before the court comports with the maritime law and accords with established common law concepts of negligence as applied to master-servant relationships. There is no conflict of decisions and petitioner points to nothing which calls for further review by this Court at this time.

1. With the settlement of the claim for maintenance and cure and the abandonment of the allegation of the unseaworthiness of the vessel (R. 4a), petitioner's only remaining remedy is that afforded by the Jones Act (§ 33 of the Merchant Marine Act of 1920, 46 U. S. C. 688, *supra,* p. 2). The Jones Act gives to seamen injured in the course of their employment the right, at their election, to maintain an action for damages in a manner similar to that theretofore afforded

railway employees by the Federal Employers' Liability Act.[8] Incorporating by reference the provisions of the F. E. L. A., the test of a shipowner's liability is the "negligence of any of the officers, agents, or employees of such carrier" and in this respect is significantly distinct from a seaman's right to maintenance and cure for injuries or illness sustained in the course of a voyage (see *De Zon* v. *American President Lines,* 318 U. S. 660, 671–672).

The liability for maintenance and cure is completely independent of any fault or negligence on the part of the ship's owner or his agents; it is a time-honored right arising as an incident of the marine employer-employee relationship, stemming from the "unique hazards, emphasized by unusual tenure and control [which] attend the work of seamen" (*Aguilar* v. *Standard Oil Co.,* 318 U. S. 724, 727). With the exception of injuries attributable to the unseaworthiness of the vessel for which a seaman had a right to compensatory damages (see *Pacific Co.* v. *Peterson,* 278 U. S. 130), prior to the Jones Act the right to maintenance and cure constituted a seaman's only remedy against either the ship or its owner (*O'Donnell* v. *Great Lakes Co.,* 318 U. S. 36, 43).

In this case, although maintenance and cure and unseaworthiness are no longer in the litiga-

[8] 35 Stat. 65, 45 U. S. C. 51 *et seq.*

tion, petitioner, relying upon the same considerations as those underlying the right to maintenance and cure, seeks to extend the liability of a shipowner under the Jones Act by what the court below characterized as "nothing less than judicial legislation" (R. 29). The extension of liability proposed in the court below and urged in the petition here appears in the guise of an heretofore unknown duty which petitioner would impose upon the shipowner to provide safe egress to a seaman, not from the ship to shore, but from the shore to the public highway. A corollary to this duty, it is contended, is the duty of the shipowner to discover and warn against any and all hazards which might conceivably be encountered between the shore and the public highway.

No authority is or can be cited for the proposition urged; instead, the petition quotes at length (Pet. 11–12) from *Aguilar* v. *Standard Oil Co.*, 318 U. S. 324, where this Court considered the question of a shipowner's obligation to provide maintenance and cure to a seaman injured while on shore leave, an issue which was, of course, removed from this case prior to trial. The decision below is in no sense of the word at variance with the result in the *Aguilar* case where the negligence of the shipowner was not in any way involved and no intent on the part of this Court to enlarge a shipowner's liability under the Jones

Act may be gleaned from the opinion, however it may be read.[4]

Similarly, since there was no dispute as to whether petitioner was in the course of his employment at the time the injuries were sustained, the aspect of the *Aguilar* case is totally inapposite to the present question.[5] Likewise irrelevant is *O'Donnell* v. *Great Lakes Co., supra,* where the remedy afforded by the Jones Act was held available to a seaman injured through the negligence of his employer while working ashore.[6] As we have pointed out (*supra,* p. 6), recovery in this case was not denied merely because petitioner was injured while ashore.

2. Properly distinguishing between a seaman's right to maintenance and cure and the right of action afforded by the Jones Act, the court below, as did the District Court, correctly concluded that there was no duty on the part of a shipowner to inspect a dock area and all avenues of approach to a ship, under the ownership and control of third persons, and to give warning of any hazards before granting shore leave to crew

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[4] See *Lemon* v. *United States*, 68 F. Supp. 793 (D. Md.); *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634 (S. D. N. Y.), affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2).

[5] Cf. *The Californian*, 124 Fed. 99 (E. D. N. Y.); *Toyo Kisen Kaisha* v. *Hartman*, 253 Fed. 422 (C. A. 9).

[6] See also *Marceau* v. *Great Lakes Transportation Corp.*, 146 F. 2d 416, 418 (C. A. 2).

members.' This conclusion represents but an application to the facts at hand of an established rule of negligence law—that the employer owes no duty to his employees to see that the public approaches to the place of employment are safe.[8] It is not qualified even inferentially by *Patrick* v. *Atlas Knitting Co.*, 164 App. Div. (N. Y.) 753, 149 N. Y. S. 845 (cited at Pet. 15), where a manufactory was so situated that, unlike the present case, no established walkway existed and the only means of egress from the plant to the public street compelled employees to cross a wholly unprotected and unguarded railroad track by reason of which situation a duty was held to devolve upon the employer to exercise due care for the safety of his employees in leaving and coming to his plant.

Petitioner harps on the special relationship of the seaman to the shipowner and to the ad-

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[7] See, to the same effect, *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634, affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2); cf. *Todahl* v. *Sudden & Christensen*, 5 F. 2d 462 (C. A. 9); *Walton* v. *Continental S. S. Co.*, 66 F. Supp. 836 (D. Md.); *Lemon* v. *United States*, 68 F. Supp. 793 (D. Md.).

[8] *Small* v. *Ralston-Purina Co.*, 202 S. W. 2d 533, 537 (Mo. App.); *Neely* v. *Goldberg*, 195 Ark. 790, 114 S. W. 2d 455; cf. *Carson* v. *Dierks Lumber & Coal Co.*, 196 Ark. 163, 117 S. W. 2d 39; *Pfiester's Adm'r* v. *Jones*, 291 Ky. 151, 163 S. W. 2d 304; *Dravo Corporation* v. *Copeland*, 190 Miss. 269, 199 So. 769; *Atkinson* v. *Corriher Mills*, 201 N. C. 5, 158 S. E. 554; *Holgate* v. *Chrysler Corporation*, 279 Mich. 24, 271 N. W. 539; *In re Emerson's Estate*, 191 Ia. 1386, 182 N. W. 376.

miralty courts as support for an expansion of liability to the present case. But the demands of that special relationship are fulfilled by the maintenance and cure provisions of the general maritime law. The Jones Act remedy for negligence was intended to do no more than to endow seamen with the normal rights incident to the ordinary employer-employee relationship. See *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634 (S. D. N. Y.), affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2).

In the courts below, petitioner cited (see R. 15a, 15b, 24) instances in which recovery under the Jones Act has been allowed where the injuries sustained were the consequence of physical assaults by fellow crewmen or ship's officers. See *Jamison* v. *Encarnacion*, 281 U. S. 635; *Koehler* v. *Presque-Isle Transp. Co.*, 141 F. 2d 490 (C. A. 2); *Kyriakos* v. *Goulandris*, 151 F. 2d 132 (C. A. 2).[9] But the reference to these cases ignores the fact that the negligence there complained of consisted of physical acts of violence inflicted by fellow crewmen whose pugnacious temperament should have been known to the common employer. While supporting the proposition that the term "negligence", as the test of liability under the Jones Act, is to be liberally construed, such cases hardly warrant the conclusion that established

[9] The petition here does not seem to rely on this line of cases.

concepts of the scope of an employer's duty of due care are thereby abandoned.[10]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1953.

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[10] "But damages may be recovered under the Jones Act only for negligence. *Jamison* v. *Encarnacion*, * * *. Whether the legislative policy of compensating only on the basis of proven fault is wise is not for us to say, nor is it our function to circumvent it by reading into the law a theory, however disguised, that a physician who undertakes care guarantees cure, and that each unsuccessful effort of the physician may be visited with a successful malpractice suit." *De Zon* v. *Amer. President Lines*, 318 U. S. 660, 671–672.

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